

REMARKS

The Examiner required restriction of one of the following inventions:

- I. Claims 1-11 and 25-30, drawn to a semiconductor device, classified in class 257, subclass 315.
- II. Claims 12-24, drawn to a process of making a semiconductor device, classified in class 438, subclass 300.

In response to the Examiner's restriction requirement, Applicants provisionally elect, with traverse, to prosecute Group I including claims 1-11 and 25-30. Applicants specifically reserve the right to file a divisional application directed to non-elected claims 12-24.

It is respectfully submitted that the subject matter of all claims is sufficiently related that a thorough search for the subject matter of any one group would encompass a search for the subject matter of the remaining claims. Thus, it is respectfully submitted that the search and examination of the entire application could be performed without serious burden. M.P.E.P. §803 states:

"If the search and examination of an entire application can be made without serious burden, the Examiner **must** examine on the merits, even though it includes claims too distinct or independent invention." (emphasis added)

Thus, it is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicants' and duplicated examination by the Patent Office.

Further, there are two criteria for a proper requirement for restriction. The invention should be independent or distinct, and

"2) there must be a serious burden on the Examiner if a restriction is not required. See M.P.E.P. §803.092, 806.04 A through J, 808.01(a) and 808.02."

Accordingly, Applicants respectfully submit that the Examiner would not be unduly burdened if forced to examine Groups I and II.

Further, Applicants respectfully submit that claim 25 is a linking claim, which "links" the subject matter of claims 1 and 12. Under current United States Patent and Trademark Office procedures, linking claims are to be examined with the specific invention elected (M.P.E.P. §809). When a linking claim is found to be free of prior art, based on the initial examination, even though it may be objected to or rejected on formal grounds, the restriction requirement should be withdrawn with respect to any claims that fall within the scope of the linking claims (*Id*). In addition, the Examiner must examine the claims to the non-elected invention that are linked to the elected invention by the allowed linking claim (M.P.E.P. §809.04). Therefore, any claim directed to a non-elected invention, previously withdrawn from consideration, which depends from or includes all of the features of the linking claim that is free of the prior art, may be rejoined and can be fully examined for patentability.

Thus, according to M.P.E.P. §809.04, the Examiner must examine the claims to the non-elected invention that are linked to the elected invention if the linking claim is allowed.

For all of the reasons stated above, reconsideration and withdrawal of the outstanding restriction requirement, and favorable allowance of all claims in the instant application is earnestly solicited.


If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Very truly yours,

HARNESS, DICKEY & PIERCE, PLC

By


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